**City of Seattle**
Edward B. Murray, Mayor

**Department of Planning and Development**
D. M. Sugimura, Director

**CITY OF SEATTLE**
**ANALYSIS AND DECISION OF THE DIRECTOR**
**OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

**Application Number**: 3017290

**Applicant Name**: Joe Hampton

**Address of Proposal**: 2001 W Garfield St

## SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development application to allow 5 new 40' x 10' floats and 10 steel piles to support 2,000 sq. ft. of new moorage for emergency response fire and rescue boats to accommodate and relocate Seattle Fire Department, Station #5. Access to the fire boat moorage will be provided by a 145 ft. long gangway. Project includes 3 modular structures for crew (1,850 sq. ft.) and equipment (750 sq. ft. and 1,200 sq. ft.) Review includes shoreline restoration and improvements.

Seattle Municipal Code (SMC) requires the following approvals:

**Shoreline Substantial Development Permit** - To allow a public facility in an Urban Industrial (UI) shoreline environment. (SMC 23.60.840 J)

**SEPA** - (Chapter 25.05 Seattle Municipal Code)

**SEPA DETERMINATION**: [ ] Exempt [ ] DNS [ ] MDNS [ ] EIS

[X ] DNS with conditions

[ ] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

## BACKGROUND DATA

Site and Vicinity Description

The Port of Seattle's Terminal 91 includes Piers 90 and 91; Pier 90 is the easternmost of the two piers. The site is comprised of about 35 acres of adjacent water area and about 72 acres of yard area north of the Magnolia Bridge. The terminal also includes 14 acres of open space, a 24-acre open-water park deeded to the City of Seattle, and the vacated Smith Cove Waterway, owned by the Port of Seattle. The site is situated in an area generally known as Smith Cove, at the north end of Elliott Bay, between the residential neighborhoods of Queen Anne Hill to the east and Magnolia bluff to the west. The property is within an Urban Industrial (UI) shoreline environment and is zoned General Industrial I with a 45-foot height limit (IG-1/U45).

Terminal 91 is the Port's largest marine terminal includes approximately 9,200 lineal feet of deep-water moorage. Existing tenants and operations currently employ approximately 2,000 persons with seasonal variations. Terminal 91 supports cargo handling facility for fruit, automobiles and fish products; serving as a factory trawler homeport and support facility; with major cold storage warehouses, distribution and seafood processing plant; an industrial marine fuel distribution facility; and short and long-term moorage for tugs and other large vessels. Upland from Terminal 91 is a storage yard area north of the Garfield Street (Magnolia) Bridge. Surrounding the perimeter of the terminal and the Smith Cove Waterway is a bicycle pathway.

Surrounding uses include the Elliot Bay Marina to the west, commercial and industrial uses to the east along both 16th Avenue West and Elliott Avenue; Burlington Northern rail yards, the National Guard Armory, and the Interbay golf course to the north; Elliott Bay Park is to the south.

Project Description

The proposed temporary relocation of Seattle Fire Department Fire Station Number Five to northeast Pier 90, Terminal 91, includes in-water and shoreline construction activities. At present, Fire Station Number Five provides essential water and land-based fire and emergency response services. The existing fire station site, at 925 Alaskan Way, includes moorage for two fire boats and a single rescue boat. The existing fire station site also houses fire truck and emergency response vehicles. Upland access to Fire Station Number Five will be impeded due to re-construction of the central waterfront seawall. Use of Terminal 91 as a fire and rescue boat moorage site for Fire Station Number Five during the period of seawall re-construction is proposed in order to ensure the required uninterrupted fire and emergency services provided by Fire Station Number Five. Land-based emergency response vehicles will not be relocated to the Terminal 91 project site.

The project proposes to install approximately 2,000 square feet of concrete cell moorage float area for moorage of two Fire Station Number Five fire boats and a single rescue boat. Five 40 feet long, ten-feet wide concrete cell floats will be installed, end-to-end, to form a 200-foot long fire station moorage. The moorage floats will be held in place with ten, 24 inch diameter cylindrical steel piling placed immediately water-ward of the existing creosote piling fender system at the northeast margin of Pier 90. Access from Pier 90 upland grade elevation to the fire boat moorage float will be provided by an L-shape metal grate surface gangway, approximately 145 feet long, mounted on the existing Pier 90 grade surface.

The combined moorage float and gangway over-water area is approximately 2105 square feet.

Temporary relocation of Fire Station Number Five to Pier 90, Terminal 91, requires installation of three pre-fabricated structures on an existing upland area immediately adjacent to the fire boat and emergency vessel moorage and gangway structures: 1) A crew accommodation modular structure, approximately 1850 square feet, will provide personnel quarters and communications/office space; 2) A fire crew equipment storage structure, approximately 750 square feet, will be located adjacent to the fire crew accommodation/office structure; and 3) A third modular structure, approximately 1200 square feet, in the form of a metal frame tent-like enclosure, that will be used for additional storage of fire crew gear, equipment, and vehicles.

Each of the modular structures will be served by access stairs and ramps. The modular structures will require water, electrical and sanitary sewer service. Sewer and water service will include up to 50 linear feet of utility trench, approximately four feet wide and four feet in depth, totaling approximately 30 cubic yards of excavation and back-fill to match existing grade conditions. Electrical service is expected to include placement of at-grade conduit tubes

Existing water depths at the proposed moorage float site are approximately minus 26 to 34 feet MLLW. It is proposed that the negative aquatic area effects due to the new sub-tidal over-water coverage will be off-set by improving existing exposed, un-vegetated rip-rap bank-line in northeast shoreline area in the Terminal 91 east slip. Bank-line improvements will include installing native riparian vegetation between elevation approximately plus 13 feet and 15 feet MLLW. Riparian planting will be placed in approximately 425 linear feet of existing rip-rap bank- line, accomplished through re-shaping the fractured stone armor bank-line to include a five to six feet wide riparian vegetation planting terrace.

Establishing native riparian vegetation in the east slip will provide increased shoreline and inter-tidal aquatic area natural resource values, as compensation for the potential negative effects of new moorage float and piling over-water structures in sub-tidal aquatic area at the northwest margin of the east slip. Re-shaped bank-line and placement of native riparian vegetation will not require alteration or fill in existing east slip aquatic area.

**Public Comment**

The initial Notice of Application was published on June 12, 2014 and that public comment period ended on July 11, 2014. The project was renoticed in order to correctly identify the Fire Station and that comment period occurred from July 5, 2014 until August, 1, 2014. DPD received no comments related to the proposal.

## ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

*A. The policies and procedures of Chapter 90.58 RCW;*

*B. The regulations of this Chapter; and*

*C. The provisions of Chapter 173-27 WAC*

*Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.*

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy seeks to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their

aquatic life, while protecting generally public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. The proposed upland structures at Pier 91 would not adversely impact the state-wide interest of protecting the resources and ecology of the shoreline, and the improvements would provide for the continued operation of a facility that is dependent upon its location in a shoreline of the state. The subject application is consistent with the procedures outlined in RCW 90.58. The overwater structures proposed will have negative impacts to the shoreline aquatic environment and fish habitat, though the project includes measures to minimize and mitigate for those impacts, as described in more detail below.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on ensuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60, that also incorporates the provisions of Chapter 173-27, WAC. Title 23 of the Municipal Code is also referred to as the Land Use and Zoning Code. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions which have also been set forth in the Land Use Code.

In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the relevant criteria set forth in the Land Use Code. The Shoreline Goals and Policies, part of the Seattle Comprehensive Plan, and the purpose and locational criteria for each shoreline environment must be considered. A proposal must be consistent with the general development standards of section 23.60.152, the specific standards of the shoreline environment and underlying zoning designation, any applicable special approval criteria, and the development standards for specific uses.

The proposed development actions occur on land classified as a waterfront lot (SMC 23.60.924) and located within an Urban Industrial (UI) shoreline environment. The proposed improvements are associated with a public facility (fire station) and as such are a permitted use in the UI shoreline environment and the underlying IG-1 zone.

**Shoreline Policies**

All discretionary decisions in the shoreline district require consideration of the Shoreline Goals and Policies, which are part of the Seattle Comprehensive Plan's Land Use Element, and consideration of the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220. The policies support and encourage the establishment of water-dependent and water-related uses on Pier 91 at Terminal 91 (please refer to Land Use Policies L339 and L342). An area objective for this portion of the Elliott Bay is to reserve waterfront lots for major port terminals while at the same time to protect and enhance migratory fish routes and feeding areas (please refer to Area Objectives for Shorelines of Statewide Significance, Policy L354 1d). The purpose of the Urban Industrial (UI) environment as set forth in Section 23.60.220 C11 is to provide for efficient use of industrial shorelines by marine facilities, such as Terminal 91.

The proposed development at Terminal 91 is to allow for the temporary relocation of a fire station public facility, which is a critical component for the safe operation of numerous waterfront and shoreline facilities and uses throughout Elliott Bay and thus is a use supported by both the purpose of the UI shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan.

**SMC 23.60.152 - Development Standards for all Environments**

These general standards apply to all uses in the shoreline environments. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses are subject to the following:

A. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as … fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.

B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.

C. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels….

D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catchbasins or settling ponds, interceptor drains and planted buffers.

F. All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.

G. All shoreline developments and uses shall control erosion during project construction and operation.

H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory

routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.

I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.

J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.

L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.

M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.

N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.

O. Navigation channels shall be kept free of hazardous or obstructing development or uses.

P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.

The Stormwater Code and Grading Code place considerable emphasis on improving water quality. In conjunction with this effort DPD developed a Director's Rule, 2000-16, to apply best management practices (BMPs) to prevent erosion and sedimentation from leaving construction sites or where construction will impact receiving waters. Due to the extent of the proposed work associated with installation of pilings, and overwater structures, the potential exists for impacts to Elliott Bay during construction and for the life of the project due to the negative impacts of overwater coverage to migrating salmon.

The project applicant has proposed several measures to minimize these impacts in the form of Best Management Practices to occur during construction, including a Spill Prevention, Containment and Countermeasures (SPCC) plan, and measures to prevent and limit artificial

light spillage into the water, which can increase predation risk on migrating salmon. The applicant is also proposing habitat mitigation in the form of native vegetation planting along the nearshore adjacent to this project location.

As proposed and conditioned below, the project complies with the above shoreline development standards.

**SMC 23.60.870 – Development standards for the UI Environment**

The proposal conforms to all of the development standards for the UI environment.

**Conclusion**

SMC Section 23.60.064 E provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter 23.60, and with RCW 90.58.020 (State policy and legislative findings).

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Thus, as conditioned below, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

## DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

## SEPA ANALYSIS

Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant (dated March 31, 2014). The Department of Planning and Development has analyzed the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the file and any pertinent comments which may have been received regarding this proposed action have been considered. As indicated in the checklist, this action may result in adverse impacts to the environment.

However, due to their temporary nature or limited effects, the impacts are not expected to be significant.

The SEPA Overview Policy (SMC 25.05.554D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations.

Codes and development regulations applicable to this proposed project will provide sufficient mitigation for short and/or long term impacts. Applicable codes may include the Stormwater Code (SMC 22.800-808), the Grading Code (SMC 22.170), the Street Use Ordinance (SMC Title 15, the Seattle Building Code, and the Noise Control Ordinance (SMC 25.08). Puget Sound Clean Air Agency regulations require control of fugitive dust to protect air quality.

Short Term Impacts

Erosion control measures will be addressed in a Temporary Erosion and Sediment Control (TESC) Plan prepared by the contractor and adhered to during construction.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts in the submitted environmental documents. Specifically, these are: 1) Street Use Ordinance (watering streets to suppress dust, obstruction of the pedestrian right-of-way during construction, construction along the street right-of-way, and sidewalk repair); 2) Building Code (construction measures in general, including best management practices to address potential runoff of surface water and sediment to Elliott Bay during construction); and 3) the Stormwater Code and Grading Code place considerable emphasis on protecting water quality. This generally takes the form of best management practices being required on building permits.

Compliance with these applicable codes and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts. The other short-term impacts not noted here as mitigated by codes, ordinances or conditions (e.g., increased traffic during construction, additional parking demand generated by construction personnel and equipment, increased use of energy and natural resources) are not sufficiently adverse to warrant further mitigation or discussion.

The following temporary or construction-related impacts are expected: temporary increased water turbidity levels, decreased air quality due to increased dust and other suspended air particulates during excavation, filling and transport of materials to and from the site as well as due to vehicle exhaust from operation of construction equipment; increased noise and vibration from pile driving, construction operations and equipment and slightly increased traffic and parking demand from construction personnel traveling to and from the work site.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Clean Air Agency (air quality). In addition Federal and

State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

The applicant's SEPA Checklist and application materials disclose that the proposed construction work will take place in the waters of Elliott Bay and in the near shore environment. With the proposed work taking place in and near water, there exists the potential for debris and other deleterious material to enter the water during this proposed work as well as other impacts due to construction-related activities such as noise levels during pile driving. A list of mitigation measures and BMPs is provided in the application to address these potential impacts, including BMPs for the proposed revegetation to limit in-water work and prevent erosion in the nearshore environment.

The discussion below regarding plants and animals that may utilize the project area provides more details about potential impacts to these species, both short and long term, and measures incorporated into the project design to address these impacts.

Construction material and equipment pose some potential danger of water and near shore contamination and shoreline erosion. The contamination and erosion could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing construction an emergency containment plan and procedures be developed and all necessary equipment be stocked on the site.

Construction activity will be restricted to timing limitations set forth in the Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife.

No further SEPA conditioning of potential short-term impacts appears to be warranted.

*Greenhouse Gas*

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery; and the movement of vehicles — themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the increased contribution of greenhouse gas emissions from this project.

Long Term Impacts

Long-term or use related impacts are also anticipated from the proposal and include: increased human activity in the near-shore and shoreline environment; increased light in the near-shore aquatic environment; and increased overwater coverage. These long-term impacts are not considered significant because they are minor in scope. Notwithstanding the determination of non-significance, the following elements of the environment merit more detailed discussion.

Plants and Animals

Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

Chinook salmon stocks that may be found in the project area include Issaquah Creek summer/fall Chinook, North Lake Washington tributary Summer/Fall Chinook, Cedar River summer/Fall Chinook, Green/Duwamish River Summer/Fall Chinook, and Newaukum Creek Summer/Fall Chinook. The Duwamish River, which lies approximately one mile south of the project area, is the closest river system that supports Puget Sound Chinook salmon. Juvenile Chinook salmon are found along nearshore shorelines in the project area from late January through September, with peak outmigration usually occurring in June and July. Adult Chinook could potentially be present in the vicinity of the project area, but the greatest abundance would be outside the nearshore area in deeper offshore areas between early summer and early fall as they return from the ocean to the Duwamish River.

The project may adversely affect Chinook salmon in the project area in the long term due to placement of in-water and overwater structures and artificial lighting spilling into the water, which could have negative impacts on migration and feeding activities and behavior for Chinook and increase risk of predation, but none of these impacts would be significant due to avoidance and minimization measures, BMPs for construction and operation, and habitat mitigation measures (discussed above in the section on shoreline general development standards). As habitat mitigation, the project includes the revegetation of approximately 2125 square feet of nearshore area with native plant species along the northeast shoreline of the Terminal 91 east slip, opposite the proposed fire vessel moorage location, which will provide long-term benefits for salmon and other species utilizing the nearshore area in the form of bank stability, vegetation detritus, insect prey production and shading. The project proposes a number of measures to limit artificial light spillage into the water, including use of LED lights and the design and location of fixtures, as described in a lighting design analysis supplied by the applicant (dated July 17, 2014) and part of the application.

Other Impacts

Several adopted Codes and Ordinances and other Agencies will appropriately mitigate the other use-related adverse impacts created by the proposal. Specifically, these are the Puget Sound Air Pollution Control Agency (increased airborne emissions); and the Seattle Energy Code (long-term energy consumption).

The other impacts not noted here as mitigated by codes, ordinances, or conditions (increased ambient noise; increased pedestrian traffic; increased demand on public services and utilities) are not sufficiently adverse to warrant further mitigation by conditions.

No further conditioning or mitigation is warranted pursuant to specific environmental policies or the SEPA Overview Policy (SMC 25.05.665).

## CONDITIONS – SEPA and SHORELINE

*During Construction*

1. The proposed construction best management practices (BMPs), which include compliance with state and federal permitting requirements for protection of water quality standards and protection of aquatic life, and other construction-related BMPs shown on submitted plans shall be implemented during construction.

*For the Life of the Project*

2. The vegetation planted consistent with the habitat mitigation plan ("Native Riparian Planting Area" plan) as shown on submitted plans shall be maintained for the life of the project. No chemical herbicides, insecticides or pesticides shall be used in this area. Dead plants shall be replaced with the same or similar native species.

3. Artificial lighting for the project shall be maintained at levels consistent with those shown in submitted plans and described in lighting analysis memo dated July 17, 2014, provided by applicant in order to prevent and minimize artificial light spillage to the water adjacent to project.

Signature: (signature on file) Date: August 14, 2014
Ben Perkowski, Senior Land Use Planner

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